



Water Law News for December 8, 2011
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WATER LAW NEWS
DECEMBER 8, 2011

BN&A, Inc.

Daily Environment

REPORT

HIGHLIGHTS

Budget

EPA Spending Bill Among Measures
To Be Considered by Conference Committee

The House and Senate plan to hold a joint conference committee Dec. 8 to begin consideration of the nine remaining spending bills for fiscal year 2012, including both chambers' Interior-Environment appropriations measures, which fund...

Energy

Obama Rejects Republican Plan to Tie
Keystone XL Pipeline to Tax Package

Following a White House meeting with Canadian Prime Minister Stephen Harper, President Obama said he would not accept a Republican effort to include an expedited permitting process for the proposed Keystone XL oil pipeline as part of a last-minute...

Enforcement

Court Says Instructions Accurate in Wastewater Case

A district court's jury instructions and evidence on conspiracy passed muster and did not satisfy a finding of error, the United States Court of Appeals for the Sixth Circuit held Dec. 2 (United States v. Long, 6th Cir., No. 09-1863, 12/2/11)....

Oil Spills

Interior Alleges More Violations by BP
In Drilling of Macondo Well Before Blowout

The Interior Department's Bureau of Safety and Environmental Enforcement issued five more violation notices Dec. 7 to BP Plc for aspects of the oil company's actions during drilling of the Macondo well, which blew out in 2010 beneath...

Oil Spills

Methane From Gulf Spill Not Released
To Atmosphere, Senior NOAA Official Says

HOUSTON—In the year following the Gulf of Mexico oil spill, research scientists have concluded that all methane from the spill was metabolized by bacteria, resulting in essentially no release of the greenhouse gas to the atmosphere,...

Regulatory Policy

CEQ Releases Draft Guidance for Agencies
To Instill Efficiency in Environmental Reviews

The White House Council on Environmental Quality Dec. 7 released for comment draft guidance outlining principles for fostering efficiency and timeliness in the conduct of environmental reviews by federal agencies....

Regulatory Policy

House Approves Bill to Require
Congressional Approval of Major Rules

The House Dec. 7 on a near party-line vote of 241-184 approved a bill (H.R. 10) that would require a vote from Congress before any regulation could go into effect with an economic impact of \$100 million....

Water Pollution

EPA to Publish Draft Ballast Water Discharge Permits

The Environmental Protection Agency is taking comment on a proposed draft general permit for ballast water discharges that includes technology-based effluent limits for commercial vessels 79 feet and longer, as well as on a draft permit...

Water Resources

California Court Reverses Decision
That Invalidated Water Transfer Pact

LOS ANGELES—The California Court of Appeal Dec. 7 ruled that the state's commitment to mitigate environmental impacts from reduced water flows to the Salton Sea under a water sharing agreement does not violate the state constitution...

SPECIAL REPORT

Water Pollution

Supreme Court Action on Discharge Permits
Could Affect Millions of Miles of Forest Roads

The U.S. Supreme Court has been asked to review an appeals court decision that could lead to a nationwide surge of water discharge permitting requirements for millions of miles of forest roads, possibly accompanied by an increase in litigation....



Inside EPA Weekly Report, 12/9/11
<http://insideepa.com/Inside-EPA/Inside-EPA-12/09/2011/menu-id-67.html>

EPA Plan For Strict New Ammonia Water Criteria Draws Industry Worries

EPA is planning to drop a flexible, two-tiered approach for a new water quality criteria for ammonia that it is developing and will continue with its planned approach to set a strict new risk-based criteria that relies in part on harms to invasive species, an approach that is drawing significant concern from the wastewater treatment industry.

OMB Seeks Funding Research Changes To Better Target Fracking's Risks

The White House Office of Management and Budget (OMB) is calling for realignment of research funding to better address potential environmental and safety risks of hydraulic fracturing, warning that existing Energy Department (DOE) research programs are too inflexible and EPA and other agencies' research roles need better articulation.

Latest Blogs

Activists Forge CCS Coalition

A host of environmental groups are launching a new coalition to advance carbon capture and sequestration (CCS) projects, improve regulatory vehicles and promote commercialization of . . .



APPROPRIATIONS:

Enviro funding could be dropped from omnibus spending package

Elana Schor, E&E reporter

Published: Thursday, December 8, 2011

As talks on a massive government funding bill enter their last lap today, GOP-backed restrictions on White House environmental policy remain an obstacle large enough to potentially push U.S. EPA and Interior Department spending out of a final deal.

That the dozens of policy riders that were attached to the House's 2012 spending bill for U.S. EPA and the Interior Department remain a thorn in lawmakers' sides is not surprising, given the intensity of the partisan clash they have driven all year long.

But with time running short for a deal after today's public meeting on an omnibus appropriations bill -- the final text likely must be filed by Monday to tee up a vote before federal funding expires Dec. 16 -- the impasse could force environmental programs to drop out of that massive package and operate under a continuing resolution (CR) for 10 more months.

Rep. Jim Moran of Virginia, the top House Democratic appropriator for EPA and Interior, yesterday said those provisions and the similarly controversial health and labor plan could be booted from the larger bill.

"There's a very good chance we're going to get stuck with a CR," he said. "You'd prune off the two bills and go forward with the other seven."

A second House Democratic appropriator, Rep. Rosa DeLauro of Connecticut, likewise was pessimistic about the fate of riders on the health and labor bill she supervises and suggested the omnibus measure could be moved without the two plans.

But that outcome is by no means guaranteed. An X factor is the defection of more than 100 House conservatives last month on a "minibus" appropriations bill for agriculture and transportation that was far less fraught with tension than the remaining spending plans. If a similar number of Republicans desert this month's coming omnibus to protest its overall spending levels, House GOP leaders could be forced to strike the environmental riders in order to hash together a majority vote with significant Democratic backing.

"One of our frustrations is that if not all the Republicans are voting for the bill, then negotiating on riders, we have to go" more toward the Democratic position, said Rep. Jack Kingston (R-Ga.), a senior House appropriator.

Among the major EPA policy limits hotly sought by the House GOP are handcuffs on the agency's cross-state air pollution rule, its curbs on toxic emissions from power plants, its industrial boiler regulations and its proposed checks on water pollution from mining operations. Neither the House nor the Senate saw their Interior-EPA spending bills through to a floor vote, adding to the uncertainty that shrouds those riders heading into today's conference meeting (*E&ENews PM*).

Despite GOP appropriators' willingness to cut a deal, Moran said, "House Republican leadership may be insisting on too many of these riders."

"Maybe you can write a little bit of legislation on an appropriations bill," he added, signaling an openness to smaller-scale riders, "but you're not going to write the whole environmental code."

At the same time, some environmental riders may be the best lure GOP leaders have to woo tea party-aligned conservatives who have spent much of their time in office slamming EPA as an out-of-control drag on business growth. "I don't like riders very much, but for other people, it's the only thing that would make them vote for [a spending bill] one way or another," moderate Rep. Charlie Bass (R-N.H.) said yesterday.

Such pressures did not ruffle the confidence of Republicans long committed to reining in President Obama's EPA through the appropriations process, as well as the Energy and Commerce Committee. Asked about the prospect of riders falling by the wayside to win Democratic votes for a 2012 spending blueprint, Rep. Joe Barton (R-Texas) described himself as unconcerned with "second- or third-degree variables" such as the leverage that party unity might afford the GOP.

Barton yesterday declined to address how he would vote on an omnibus that had no major environmental riders, saying he has to tell his leaders how he plans to vote should the 2012 spending bill come to the floor as expected next week.

Moran said the overall funding cuts imposed on EPA under a prospective deal would be about "a 3 percent cut, 4 [percent] maybe," or about half the House-passed levels.

The Interior-EPA spending bill pulled from the House floor in August would have given the former agency \$9.9 billion for fiscal 2012, or \$715 million less than it got in 2011. EPA would have taken a hit of about \$1.5 billion below 2011 levels, or \$7.1 billion on a yearlong basis (*E&E Daily* , July 13).

Simpson confirmed yesterday in a brief interview that the riders on his subpanel's bill remained unresolved and that the overall funding levels in any conference agreement would be higher than the House-passed version.

Energy and water issues

A less divisive segment of the omnibus bill being finalized at today's public meeting is funding for the Energy Department, the Army Corps of Engineers and related agencies for fiscal 2012.

Sen. Mark Kirk (R-Ill.) has backed away from an earlier attempt to include funding in that bill for the controversial nuclear waste repository under Yucca Mountain in Nevada, but his aides said yesterday that he is hoping funds the House included for the project would end up in a final conference agreement.

Kirk began circulating a letter last month to shore up support for \$45 million the House included in its DOE spending bill to fund the Nuclear Regulatory Commission's review of Yucca. The Obama administration has abandoned the repository, citing lack of public support, and NRC has since closed down its review. Sen. Dean Heller (R-Nev.) filed an amendment to counter Kirk's efforts by blocking Yucca funding (*E&ENews PM* , Nov. 16).

Riders related to the GOP investigation of bankrupt DOE-backed solar company Solyndra could yet rear their head in the final days before the Dec. 16 deadline for clearing a fresh government spending plan.

Bass put the coming make-or-break moment for both parties' leaders in stark terms yesterday: "I wake up every morning and thank my lucky stars that I'm not the speaker or the majority leader in either the Senate or the House."

Schedule: The meeting of conferees on an omnibus appropriations package is today at 10:30 a.m. in HC-5, Capitol building.

Reporters Katie Howell, Hannah Northey and Emily Yehle contributed.

GULF SPILL: Debate rages over what to do with potential billions in Deepwater Horizon fines

Paul Quinlan, E&E reporter

Published: Thursday, December 8, 2011

Congress remains divided over bipartisan proposals being pushed by Gulf Coast lawmakers to send 80 percent of the potentially billions of dollars in Deepwater Horizon fines to their states to pay for environmental and economic recovery efforts.

After months of intense negotiations, bipartisan coalitions of lawmakers from Gulf of Mexico states came together behind House and Senate bills that would each capture 80 percent of the fines and then subdivide the money between Florida, Alabama, Mississippi, Louisiana and Texas according to complex but similar formulas. Unless the law is changed, the money will flow into the Treasury where it would be used to pay for future oil spill cleanups and to offset deficit spending elsewhere.

What has become clear is that supporters of the bills, each known by its acronym, the "RESTORE Act," have much work still ahead in enlisting necessary support from skittish colleagues.

Some naysayers complain the money would be wasted on unnecessary pet programs or divided among states unfairly. Some call the proposal duplicative, citing the existing damage assessment process under the law and BP PLC's pledges to make individuals and businesses whole through its \$20 billion claims fund. Others oppose the favored mechanism for offsetting the \$1.2 billion price tag assigned to the Senate version by the Congressional Budget Office: a three-year extension of the per-barrel tax on oil drilling.

"We never thought this would be easy," said Rep. Steve Scalise (R-La.), the sponsor of the House bill who co-founded the Gulf Coast Caucus this summer specifically to unite the region's lawmakers behind the effort. "By no means are we finished. ... We have challenges and we're just going to keep working to get through them."

The Senate bill ([S. 1400](#)) passed committee but remains short of the filibuster-proof 60 votes necessary to move through the full chamber.

Disagreement reigns most heavily in the House, where Transportation and Infrastructure Chairman John Mica (R-Fla.) at the start of a hearing yesterday on the proposal, declined to take a position on the legislation ([H.R. 3096](#)), though he said bill backers had lobbied for his support.

"I thought what would be best to do, rather than lend my support to a particular measure or division of those awards, was to hear everyone out in an open forum," he said.

Water Resources Subcommittee Chairman Bob Gibbs (R-Ohio) was less equivocal and more leery of Gulf state lawmakers with their hands out. Gibbs laid out a laundry list of concerns: that the responsible companies had already agreed to make restitution, that the Gulf Coast already receives \$25 million annually in drilling revenues and that the region has received billions of dollars in flood damage-reduction money following Hurricane Katrina.

"Now some are seeking billions in Deepwater Horizon Clean Water Act penalties for these same activities," Gibbs said. "I have some concerns with the precedent that sets."

Gibbs also argued that the cost was steep and that the money might be more useful in the federal spill cleanup fund, called the Oil Spill Liability Trust Fund.

"Redirecting these penalties away from the fund could undermine efforts to respond to future spills where the responsible party is either insolvent or is operating in foreign waters such as Cuba," he said.

Supporters of the bill bristled at the arguments. Rep. Jeff Miller (R-Fla.), one of five Gulf state members who testified, said he wanted to "set the record straight."

"BP and responsible parties have not, and in many cases do not intend to make many of the individuals that were harmed economically whole," Miller said.

BP PLC created a \$20 billion claims fund at President Obama's direction to reimburse individuals and businesses who suffered earnings losses resulting from the damage the spill did to the reputation of Gulf beaches and seafood. But Miller and others said there is no mechanism in the law to help people and criticized the claims fund for having only expended \$6 billion and leaving many legitimate claims unfulfilled.

Several business owners testified to the losses they suffered, including Julian MacQueen, CEO of Gulf Breeze, Fla.-based Innisfree Hotels, who said his company survived a dead tourist season by "cutting staff and expenses to the bone."

"Unfortunately, while the rest of the nation enjoyed a record summer, we endured the trauma of a season without tourism," he said.

Equally dismissive of the claims fund and BP's efforts was Scalise.

"They've said a lot of things, and yet you still have not only individuals but small businesses that not only haven't been made whole but some that have gone bankrupt," Scalise said in an interview. He dismissed many of the concerns voiced in the hearing as "inaccuracies or myths that don't really hold merit."

Responding to the criticism, BP spokesman Tom Mueller reiterated the company's pledge in an email: "From the outset, we have committed to paying all legitimate claims and to fulfilling our obligations under [the Oil Pollution Act] to economic and environmental restoration in the Gulf."

Garrett Graves, head of Louisiana Gov. Bobby Jindal's (R) Office of Coastal Activities, testified that the two processes for assessing fines under the Clean Water Act and the existing legal process that puts BP on the hook for environmental restoration -- the so-called Natural Resources Damage Assessment (NRDA) -- were not duplicative but rather "absolutely complementary things."

"They are deterrents from causing environmental damages," he said. "They are in the same statute."

The Obama administration supports efforts to send spill penalties to the Gulf Coast, a recommendation Navy Secretary Ray Mabus, Obama's point man for Gulf recovery and a former Mississippi governor, made in a report last September. But when two administration officials -- Craig Bennett, director of the Coast Guard's National Pollution Funds Center, and Tony Penn, deputy chief of assessment and restoration at the National Oceanic and Atmospheric Administration -- raised concerns during the hearing about short-changing the oil spill cleanup fund and the potential that tapping the fine money could "complicate" future litigation, Rep. Jeff Landry (R-La.) pounced.

"Would you normally go against the recommendation of this administration?" Landry said. "Would you make that recommendation to us today? ... I just like to make sure that everyone's singing off the same hymnal."

Bennett said he would support work to clarify the differences between the penalties and the NRDA process. Penn said BP should be required to pay for damages separately.

"We should not be doing restoration with the RESTORE Act money," he said. "That should be the responsible parties."

Under the bill, the 80 percent of the fines captured would be divided so that 35 percent would be split equally among the states to pay for economic and environmental restoration projects, as defined in the bill. Another 30 percent would be used to develop and implement a comprehensive restoration plan, created by a federal-state Gulf Coast Restoration Council that includes representatives from all five states. Finally, 30 percent would be further disbursed according to an impact-driven formula.

The remaining 5 percent would fund a long-term science and fisheries endowment and create Gulf Coast Centers of Excellence to advance research, science and technology around Gulf Coast issues.

OIL AND GAS:

Obama vows veto of any attempt to link pipeline with payroll tax measure

Elana Schor, E&E reporter

Published: Wednesday, December 7, 2011

The White House today vowed to "reject" GOP attempts to link an extension of his payroll tax cut to a speedy approval of the Keystone XL oil pipeline.

President Obama's comments came during a joint appearance at the White House with Canadian Prime Minister Stephen Harper, a major backer of the \$7 billion link between his nation and the Gulf Coast.

House Republicans are readying a measure reupping the Social Security tax relief that is anticipated to include Rep. Lee Terry's (R-Neb.) plan for a fast-tracked approval of Keystone XL, which would significantly boost U.S. imports of Canadian oil sands crude if approved. The president's meeting with Harper, ostensibly focused on border security and trade, became a stage for pipeline debate as Republicans hammered Obama for his State Department's delay in deciding on a \$7 billion project they bill as an irresistible job creator.

"Any effort to try to tie Keystone to the payroll tax cut I will reject," Obama said, while tempering his comment by predicting that "I don't expect to have to veto it."

Obama also extended his vow to other policy riders that could end up attached to a House-side payroll tax bill, decrying Republican "efforts to tie a whole bunch of other issues to what's something they should be doing anyway." GOP leaders are said to be weighing the addition of language blocking U.S. EPA rules for industrial boiler emissions to their payroll tax pitch in a bid to win over reticent conservatives (*E&E Daily* , Dec. 6).

Those same senior Republicans seized on the Obama-Harper appearance to prod the president for a reversal of State's move last month to put off a final decision on the XL link until after the 2012 election. House Speaker John Boehner (R-Ohio) urged Obama to use the Canadian meeting as an opening to immediately approve the 1,700-mile pipeline, while Senate Minority Leader Mitch McConnell (R-Ky.) delivered a floor speech hailing it as "the single greatest shovel-ready project in America."

But not only did Obama not take the bait, he defended State's decision to extend an environmental review of a new route for the contentious project through Nebraska.

"This is a big project with big consequences," Obama told reporters at the White House, with Harper standing by his side. "We've seen Democrats and Republicans express concerns about it."

State officials are making sure their review "crosses all its t's and dots all its i's" before releasing a final ruling on a permit for the pipeline, Obama added. Green groups hailed the delay as a sign that the administration was receptive to their condemnation of Keystone XL as a spur for greater greenhouse gas emissions, while industry groups lamented a delay they linked to election-year political concerns at the White House.

Boehner spokesman Michael Steel indicated after Obama spoke that Republicans have no intention of backing down from their plans to tie Canadian oil supplies to the tax cut. "If President Obama threatens to veto [the forthcoming GOP bill] over a provision that creates American jobs, that's a fight we're ready to have," Steel said via email.

Harper, for his part, declined to "comment on the domestic politics of this issue or any other issue in the United States." His government has made increased export of Albertan oil sands crude a major priority, however, and indicated that the demise of the XL link could lead its fuel producers to turn their focus to Asian export markets.

OIL AND GAS:

EPA chief's comments on fracking 'contradictory' -- Inhofe

Mike Soraghan, E&E reporter

Published: Wednesday, December 7, 2011

One of hydraulic fracturing's most vocal supporters in Congress says recent comments by U.S. EPA Administrator Lisa Jackson raise questions about a high-profile drinking water contamination incident in Wyoming.

Sen. James Inhofe (R-Okla.) sent a letter to Jackson today asking about her statement last month that fracturing might be linked to high levels of methane, benzene and other chemicals in wells in Pavilion, Wyo. (*Greenwire* , Nov. 18).

He said EPA staff had assured him previously that hydraulic fracturing was not a focus of the Pavilion investigation and that there were no significantly new data in an EPA announcement last month.

"Because of these contradictory statements, I am concerned that EPA has pre-determined that hydraulic fracturing is the cause of contamination in their Pavilion investigation and the agency is trying to make the data conform to that conclusion," Inhofe wrote.

An EPA spokeswoman did not immediately respond to a message seeking comment.

In a television interview last month, Jackson said, "It is possible that fracking in one bearing zone may have impacted nearby areas that may contain some groundwater."

It was the first time Jackson raised a possible link between the oil and gas industry practice of fracturing and the water pollution in Pavilion.

Encana Corp., which drills in the area's gas field, has denied the link between drilling and the contamination, saying EPA drilled its monitoring wells in a natural gas zone.

[Click here](#) to read the letter.

NATURAL GAS: Industry spending blitz helped kill 'FRAC Act,' watchdog says

Mike Soraghan, E&E reporter

Published: Wednesday, December 7, 2011

A watchdog group is linking the surge in political spending by the oil and gas industry to the failure of legislation to enact federal regulation of hydraulic fracturing.

"The rate more than tripled in the last election cycle," said James Browning, regional director for state operations at Common Cause, at a webinar today on fracturing and campaign contributions. "The industry was very afraid that this would be passed with a Democratic Congress and President Obama in the White House."

Rep. Diana DeGette (D-Colo.) introduced legislation in 2008 to reverse a 2005 law that exempted hydraulic fracturing from regulation under the Safe Drinking Water Act. Before 2005, the law had been silent on whether fracturing was covered by SDWA.

In 2009, she reintroduced it as the "Fracturing Responsibility and Awareness of Chemicals Act," or "FRAC Act." She expanded it to require public disclosure of the chemicals used in fracturing fluid.

Her bill stalled in the House Energy and Commerce Committee without getting a hearing (though the committee did have hearings that addressed hydraulic fracturing). When Republicans took over the House in 2010, the chances of it passing declined even further.

Browning, who authored a report titled "Deep Drilling, Deep Pockets," said 2010 election spending by a "faction" of the natural gas industry he dubbed the "fracking" industry was three times higher than in the 2002 congressional election cycle.

He defined that faction by separating out companies active in drilling and hydraulic fracturing in Pennsylvania, Maryland, Ohio, Michigan, New Mexico, West Virginia, Texas, Colorado, Utah and Wyoming, according to a Common Cause spokeswoman.

Chris Tucker, spokesman for Energy in Depth, a drilling industry group created to fight federal regulation of fracturing, noted that the bill failed to get a hearing during two cycles in which the House was controlled by DeGette's fellow Democrats and the committee was chaired by liberal Rep. Henry Waxman of California.

"Are these guys really trying to tie that to campaign donations? Was Henry Waxman bought off, too?" Tucker said. "I think one of the reasons the FRAC Act didn't pass, probably the biggest one, is that substantively speaking, it's not a particularly well-written piece of legislation."

GULF SPILL: House lawmakers slam BP's efforts to make Gulf state businesses whole

Paul Quinlan, E&E reporter

Published: Wednesday, December 7, 2011

Gulf Coast Republicans today bluntly criticized BP PLC's efforts to make whole individuals and businesses that suffered lost earnings as a result of last year's massive oil spill.

The criticism came as the House Transportation and Infrastructure Committee considered legislation intended to send 80 percent of the potentially billions of dollars in spill-related fines to the five Gulf Coast states of Florida, Alabama, Mississippi, Louisiana and Texas to pay for environmental and economic recovery efforts.

"BP and responsible parties have not, and in many cases do not intend to make many of the individuals that were harmed economically whole," said Rep. Jeff Miller (R-Fla.).

Although BP created a \$20 billion victim compensation fund that is being overseen by Kenneth Feinberg, critics noted that the fund has expended about \$6 billion to date and that many businesses have shuttered and still remain uncompensated for the damage done to the region's fishing and tourism industries.

In pushing for the legislation, Miller said there is no legal requirement for companies responsible for the spill to compensate for economic damages.

"There is not a mechanism to restore the countless small businesses that went out of business because of the spill," Miller told the committee. "There is not a mechanism to help the people who lost jobs, lost homes, lost families because of the spill. You either roll the dice with the BP-Feinberg claims facility or take your chances in court."

Rep. Steve Scalise (R-La.), who hails from a state as economically dependent on offshore oil drilling as it is on fishing and tourism, was similarly critical of BP and its efforts to compensate victims and cited an example of an old seafood company that was forced to close and others whose representatives testified during the hearing.

"A lot of the promises that were made haven't actually come to fruition -- some of the promises by BP to make things whole," Scalise said. "There are a whole lot of people still waiting in line that haven't gotten made whole, and some businesses have already gone bankrupt."

BP did not respond to a telephone call seeking comment in time for publication this afternoon.

GULF SPILL: Interior issues new round of BP violation notices

Phil Taylor, E&E reporter

Published: Wednesday, December 7, 2011

This story was updated at 1:20 p.m. EST.

The Interior Department today issued a handful of new violations to BP PLC for alleged missteps in last year's oil spill in the Gulf of Mexico.

The violations come roughly two months after Interior issued more than a dozen citations to BP and its contractors Halliburton Co. and Transocean Ltd. for their roles drilling the failed Macondo well.

"Our federal regulations exist to ensure safe and environmentally-responsible activities. We will continue to be vigilant in enforcing those regulations," said James Watson, the new director of Interior's Bureau of Safety and Environmental Enforcement (BSEE), in a statement. "Further review of the evidence demonstrated additional regulatory violations by BP in its drilling and abandonment operations at the Macondo well."

Interior cited BP once for failing to conduct an accurate pressure test.

The company on four occasions also failed to suspend operations when the safe drilling margin identified in its drilling permit was not maintained, Interior said.

BP in an emailed statement said the violations issued today played no "causal role" in the Macondo accident. Spokesman Scott Dean said the company intends to appeal the new notices, as well as those issued several weeks ago.

The company, which has two months to appeal the violations, could face fines of up to \$35,000 per incident, per day, according to the penalties in place at the time of the disaster.

Interior this summer raised civil penalties to \$40,000, but agency officials have complained the amount is far too low to deter companies from risky behavior. An offshore oil rig can cost \$500,000 to \$1 million a day to operate.

The House last Congress passed a bill that would raise the cap to \$75,000 a day or to \$150,000 a day in cases where human or marine life, mineral deposits or the coastal or human environment are threatened. Penalties for "knowing and willful" violations of the Outer Continental Shelf Lands Act would rise from \$100,000 to \$10,000,000 under the bill.

The Senate Energy and Natural Resources Committee this Congress is vetting a bill that would make similar changes.

The latest violations are the result of a review by BSEE staff who were not involved in a joint Interior-Coast Guard investigation that explored the underlying data and evidence related to the Deepwater Horizon drilling operations.

Former BSEE Director Michael Bromwich last month said his agency is seeking ways to shorten the time it takes to issue violations, assess fines and receive payments (*E&ENews PM* , Nov. 28).

"In the past it has been a year or more," he said. "That's entirely unacceptable to me."

Today's violations come as BP and Halliburton are battling in court over who bears the blame for last year's disaster, which killed 11

men and released nearly 5 million barrels of oil into the Gulf.

BP in a legal filing this week said Halliburton intentionally "destroyed the results of physical slurry testing" on the well "in part because it wanted to eliminate any risk this evidence would be used against it at trial" (*Greenwire* , Dec. 6).

GULF SPILL:

Halliburton fights BP claims that it destroyed evidence

Published: Wednesday, December 7, 2011

Halliburton Co. yesterday refuted claims by BP PLC that it destroyed data showing the cement used on the Macondo well was unstable.

BP on Monday alleged in a legal filing that Halliburton used a faulty foam cement slurry on the well and then destroyed internal results from testing on it just days before the well blew out and caused the Deepwater Horizon spill. BP cited Halliburton witnesses who said in court that they "destroyed" results on the cement slurry after the spill to make sure they were not "misinterpreted."

Halliburton yesterday said the testing done after the spill was not conducted on the cement mix actually used in the well and blamed BP for instability in the cement and for mistakes related to positioning pipes in the well.

"BP is attempting to divert attention from its poor decisions and practices by criticizing the work and reputation of Halliburton," Halliburton spokeswoman Beverly Blohm Stafford said. "BP has been aware of post-incident tests for some time but has chosen this late date in the litigation to mischaracterize the results of such tests," she added.

How well the cement held has been a central issue in the legal aftermath of the oil spill. Independent testing done for a presidential commission after the spill found the cement to be unstable (Jennifer Dlouhy, *Fuel Fix* , Dec. 6). -- AP

WATER POLLUTION:

Coal company reaches \$350K settlement with W.Va. regulators

Manuel Quinones, E&E reporter

Published: Wednesday, December 7, 2011

Arch Coal Inc. has agreed to pay \$350,000 to resolve water pollution violations at a Logan County, W.Va., mine, the West Virginia Department of Environmental Protection announced yesterday.

State regulators say Arch subsidiary Mingo Logan Coal Co. violated discharge limits for Proctor Hollow and Buffalo Creek. They say equipment installed by the company contributed to pollution violations in 2009 from an underground abandoned mine.

The deal will provide \$300,000 to DEP's Stream Restoration Fund, with the rest going to the Buffalo Creek Watershed Association.

Arch and Mingo Logan are not admitting liability as part of the settlement, which was filed in Logan County Circuit Court. The public will have 30 days to comment before it becomes official.

OIL AND GAS:

Outside groups ship water to Dimock, Pa.

Published: Wednesday, December 7, 2011

Thousands of gallons of tanked and bottled water arrived yesterday in Dimock, Pa., even though a natural gas company in the area was relieved of its water delivery duties last week.

The imported water came from natural gas critics who stepped in to fill the void left by Cabot Oil & Gas Corp., the company Dimock residents blame for polluting the township's water supplies.

The delivery was a star-studded affair, with guests such as actor Mark Ruffalo and "Gasland" director Josh Fox calling out the state government for having "failed" local homeowners.

In October, the state Department of Environmental Protection permitted Cabot to stop water deliveries to homeowners whose wells were contaminated with methane (*E&ENews PM* , Oct. 19). Homeowners said the gas came from Cabot drilling, but the company has said methane occurs naturally in 80 percent of the local wells the state tested.

Pennsylvania DEP had been pushing for an \$11.8 million public water line for residents, but the agency scrapped the plan after reaching a \$4.6 million settlement with Cabot. The agreement required the company to pay each of the 19 affected families twice the tax-assessed value of their homes and install methane-removal systems. Eleven of the families refused the terms of the deal and are now suing the driller.

Cabot ended its water deliveries on Nov. 30.

Supporters of the driller say the lawsuits and demonstrations have "defamed" Dimock, which supporters say has clean and potable water.

Cabot is "stepping up to the plate," said Tim Maye, one of the families who accepted the driller's deal.

Bill Aileo, an organizer of the pro-drilling community group Enough is Enough, shared similar feelings.

"We are a thriving, proud, healthy place to live," Aileo said. "We have been very pleased to have natural gas development come to our community. Most of us have benefited from it."

But on the anti-drilling side of yesterday's rally, hydrologist Paul Rubin disagreed. Tests conducted late last month show elevated lead, arsenic and aluminum levels in some of the affected families' wells.

"This is cause for great concern," Rubin said.

Sheila Ely, one of the 11 families suing Cabot, said she was grateful for the deliveries.

"We appreciate the water," she said (Laura Legere, Scranton [Pa.] Times-Tribune , Dec. 7). -- **PK**

WATER POLLUTION: Ohio drafts plan to clean Lake Erie but hasn't said who will pay

Published: Wednesday, December 7, 2011

Ohio has a plan for reducing the algae in Lake Erie but has not yet hashed out some of its most important details, such as who will pay for the cleanup.

In a draft plan released to federal regulators, the Ohio Environmental Protection Agency said it is considering focusing on five steps that include upgrading stormwater systems, improving land use and expanding regulations.

The 10-year effort is meant to reduce nitrogen and phosphorus flow into the lake that can cause algae blooms and dead zones. U.S. EPA had requested such a plan from Ohio environmental officials.

But the state has not yet determined who will take the steps, whether it is farmers or municipalities. The plan acknowledges that improving stormwater and sewer systems and forcing farmers to take pollution reduction measures would all be costly.

"The costs cannot be overlooked, especially in the current economic climate," the Ohio EPA wrote.

Anthony Sasson, freshwater conservation coordinator for the Nature Conservancy in Ohio, urged the state to take tough actions despite the costs.

"The big question is determining if we have the political will and resources," Sasson said. "The costs are going to be large. But, the costs of not doing some of these things also are big. If we don't do it for Lake Erie, Lake Erie is in serious trouble" (Randy Ludlow, Columbus Dispatch , Dec. 7). -- **AP**

ALASKA: Enviros trumpet poll showing national opposition to Pebble mine

Manuel Quinones, E&E reporter

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Environmentalists released poll results yesterday showing widespread skepticism about Pebble Limited Partnership's planned gold and copper mine in southwest Alaska.

The survey found 66 percent of respondents in the lower 48 states saying they are somewhat or strongly opposed to the project after pollsters read a statement explaining the debate.

The statement: "Supporters of Pebble Mine say that building the mine will create several thousand jobs, help the local economy, and provide a large new domestic source for metals the United States needs for its security. Opponents say that Pebble Mine will produce billions of tons of toxic waste and endanger the largest wild sockeye salmon fish population in the world, which is key to the area's economy, culture, wildlife, and ecosystem."

A survey of Alaska residents found 59 percent opposed the mine, with 43 percent expressing strong feelings. Most Alaska respondents were familiar with the controversial project.

The poll also showed that many Alaskans agreed with U.S. EPA vetoing the project if the agency proves it would "permanently pollute

the land and water."

While mine executives say resource extraction and salmon habitats can coexist, environmental advocates are lobbying for EPA action. The agency is conducting an overall review of large-scale development in the Bristol Bay area.

"We are happy to see growing opposition in the rest of the country as more people become familiar with this high-risk mining venture being proposed in the heart of the Bristol Bay Fishery Reserve," Anders Gustafson, executive director of Renewable Resources Coalition, said in a statement.

Pollsters said opposition for the mine increased as respondents learned more about it. The survey included several statements for and against the mine.

"In general, this is a very biased poll by a known opponent of our project that has been using our project as a major fundraising vehicle with a very misleading and biased direct mail campaign," Pebble spokesman Mike Heatwole said in a statement. "As we've noted before, everyone is better served when we have a factual discussion about Pebble and the opportunity it could present for a part of our state that faces severe economic challenges."

The Washington, D.C., firm Belden Russonello Strategists LLC conducted the poll for the Natural Resources Defense Council, the Renewable Resources Coalition and the Alaska conservation group Nunamata Aulukestai.

Pollsters queried 600 people in the lower 48 states and 201 in Alaska between Aug. 18 and 25. The polls have a margin of error of 4 percent and 6.9 percent, respectively.

The BRS survey is the latest of several by environmentalists in recent months (*Greenwire* , Nov. 9).

[Click here](#) to see the poll details.

NEVADA: Top mining projects feature vanadium, lithium and gold

Manuel Quinones, E&E reporter

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American Vanadium Corp.'s Gibellini Hill project is first on this year's list of top Nevada mining and exploration efforts compiled by the state Division of Minerals.

The Vancouver, British Columbia-based company hopes to become North America's primary producer of vanadium, a chemical element often used as a steel additive. American Vanadium hopes to begin production at the Eureka County mine in 2013 and supply 5 percent of the demand for the element.

Western Lithium Corp.'s Kings Valley project, No. 2 on the list, hopes to begin production in 2014. It would extract lithium from clay deposits in northern Nevada for use in advanced batteries. Earlier this year, the company signed an agreement with the Department of Energy's Argonne National Laboratory (*E&ENews PM* , Oct. 5).

Newmont Mining Corp., a major gold producer in the state, may end up producing more than 2 million ounces of gold at its newly acquired Long Canyon project. Production is likely several years away.

The federal Bureau of Land Management released a draft environmental impact statement earlier this month for the fourth project on the list, General Moly Inc.'s Mount Hope mine. The company says the Eureka County deposit is one of the world's largest and highest-grade deposits of undeveloped molybdenum, an element used as an alloy in steel manufacturing.

BLM estimates the mine would generate 1.7 billion tons of waste rock over three decades. Company executives were pleased at the swift release of the agency's draft EIS. A 90 day comment period closes in March.

"A process that has historically taken three months or longer was accomplished in less than one month," CEO Bruce Hansen said in a statement, "in large part due to the administrative efforts of the BLM offices to expedite projects."

Other projects on the list are Nevada Copper Corp.'s Pumpkin Hollow property in Lyon County and Barrick Gold Corp.'s Eureka County discoveries.

ClimateWire -- Thu., December 8, 2011 -- [Read the full edition](#)

1. NEGOTIATIONS: U.S. viewed as delaying progress as climate talks near an uncertain end

DURBAN, South Africa -- Minutes after being heckled this morning by a college student about the U.S. position on climate change, State Department Envoy Todd Stern pushed back hard against the widespread perception here that the United States is blocking action until 2020. Striding into an afternoon press conference, Stern insisted that the idea is a "misconception" that he wants to put to rest. "It is completely off base to suggest that the U.S. wants to delay action until 2020," he said.

TODAY'S STORIES

2. POLITICS: Some understanding, some frustration over U.S. role in climate talks

3. POLICY: NOAA chief calls storm-ridden 2011 'a harbinger of things to come'

4. NATURAL GAS: Unconventional gas supplies may give U.S. manufacturers a competitive edge -- study

- 5. COAL: Wall Street ratchets up pressure on coal as Goldman Sachs downgrades sector**
 - 6. AVIATION: Senate bill introduced to block E.U. tax on U.S. airline emissions**
 - 7. GRID: FERC sides with wind generators in Bonneville Power dispute**
 - 8. ELECTRIC VEHICLES: Calif. zooms ahead in EV investment, patents, adoption**
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- E&ETV's OnPoint**
- 17. ELECTRIC VEHICLES: 350Green's Goodridge discusses company's plans for EV charging networks**

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